

Ordinance No. _____, Series 2007

**AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 95 OF
THE LOUISVILLE METRO CODE OF ORDINANCES RELATING TO
HAZARDOUS MATERIALS.**

**Sponsored By: Council Members Cheri Bryant Hamilton,
Rick Blackwell, and Kelly Downard**

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL] AS
FOLLOWS:**

SECTION I. Pursuant to KRS 67C.115(2), Chapter 95 of the Louisville Metro Code of Ordinances, is hereby amended, and reenacted as follows:

Section 95.01 PURPOSE.

The purpose of this ordinance is for the protection of public health and safety in ~~Jefferson County~~ Louisville Metro, through prevention and control of hazardous materials incidents and releases and to require the timely reporting of releases thereto.

Section 95.02 APPLICABILITY.

This ordinance shall apply to all ~~persons~~ parties who manufacture, use, or store hazardous materials in quantities prescribed by this ordinance and as defined herein, within ~~Jefferson County~~ Louisville Metro.

Section 95.03 DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTERING AGENCY. The Metropolitan Sewer District.

~~AUTHORIZED RELEASE. See RELEASE, AUTHORIZED.~~

BLUE LINE STREAM. Those streams, creeks, ditches or other waterways which appear on a USGS 7-1/2 minute quadrangle map, shown by a blue line, or other

comparable streams, creeks, ditches, or waterways ~~which~~ that do not appear merely because of the date of compilation of the USGS map.

CONSUMER PRODUCT. Any tangible personal property ~~which~~ that is distributed in commerce and ~~which is~~ that normally is used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed.

EMPLOYEE. Any person who works, with or without compensation, in a workplace.

EMPLOYER. Any person, firm, corporation, partnership, association, government agency, or other entity engaged in a business or in providing services that has employees.

ENVIRONMENT. The navigable waters of the United States and any other surface water, ground water, drinking water supply, soil source, land, subsurface strata, outdoor impervious surface, storm sewer, or publicly or privately-owned treatment works (other than those handling only wastewater generated at a facility) within boundaries of ~~Jefferson County~~ Louisville Metro. ENVIRONMENT shall include air only for purposes of reporting releases pursuant to § 95.06(A).

FACILITY.

(1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(2) Any site or area where a hazardous material has been deposited, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in consumer use or any vessel, unless in dry dock.

HAZARDOUS MATERIALS.

(1) Any substance designated pursuant to Section 311(b)(2)(a) of the Federal Water Pollution Control Act.

(2) Any element, compound, mixture, solution, or substance designated by the U.S. Environment Protection Agency (EPA) pursuant to the Comprehensive Environment Response, Compensation, and Liability Act of 1980, Section 102 (CERCLA).

(3) Any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (commonly known as the Resource Conservation and Recovery Act or RCRA), but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by the an Act of Congress.

(4) Any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act.

(5) Any hazardous air pollutant listed under Section 112 of the Clean Air Act.

(6) Any imminently-hazardous chemical substance or mixture with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act.

(7) Any substance designated an extremely hazardous substance pursuant to Section 302(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The term does include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs of this definition, and the term does include, if stored, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas, or synthetic gas.) Hazardous materials shall include those contained in the "List of Hazardous Materials," which is included in ~~an appendix~~ Appendix A to this ordinance, radioactive materials and isotopes, and explosives. Hazardous materials shall not include household wastes and other materials excluded by 40 CFR 261.4. ~~Hazardous materials shall not include any material which is a gas under standard temperature pressure except for purposes of reporting of releases pursuant to Sections 95.06(A) and (D).~~

HAZARDOUS MATERIALS INCIDENT. The actual release of a hazardous material which:

(1) (a) poses an imminent threat to the environment and to the health, safety, or welfare of either individuals at the site of the incident, or of the general population; and

(b) requires immediate response, incident assessment, control, containment, and abatement of the immediate hazard by an outside agency; or

(2) involves a reportable quantity of hazardous materials, regardless of whether abatement occurs by employees at the site of the incident, or by any outside agencies.

HMPC Plan. A Hazardous Materials Spill Prevention and Control Plan, as set forth in Section 95.07.

IMPERVIOUS SURFACE. A surface ~~outside of a building~~ which substantially reduces the rate of infiltration of liquids into the earth, including but not limited to asphalt and concrete roadways, floors, walks, and parking lots, but not including a closed containment vesse.

MANUFACTURE. To produce, import, or compound a hazardous material, whether produced as an end product or by-product in the production of another substance. The term shall also include hazardous ~~substances~~ materials that remain in end products as impurities.

NAVIGABLE WATER. The waters of the United States, including the territorial seas, as defined under the Federal Water Pollution Control Act (also known as the Clean Water Act).

NORMAL APPLICATION OF PESTICIDES. Application pursuant to the label directions for application of a pesticide product registered under Section 30 or Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 135 et seq.) (FIFRA), or pursuant to the terms and conditions of an experimental-use permit issued under Section 5 of FIFRA, or pursuant to an exemption granted under Section 18 of FIFRA.

OIL. Oil of aAny kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

PERSON PARTY. Any individual, trust, firm, company, society, corporation, joint-stock company, partnership, consortium, association, cooperative, joint venture,

~~Metro Government~~, city, county, ~~city, county and Metro Government~~ special district, the state, or any department, or agency or political subdivision thereof, United States Government, or other commercial or legal entities.

RELEASE. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:

(1) With respect to a claim which such ~~persons~~ parties may assert against the employer of such ~~persons~~ parties as provided by CERCLA regulations, any release which results in exposure to ~~persons~~ parties solely within a workplace;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; and

(3) The normal application of fertilizer and pesticides.

RELEASE, AUTHORIZED.

(1) A release which is federally permitted under 42 U.S.C. 9601(10);

(2) A release to waters of the United States or adjoining shorelines which is exempt from notification under 40 CFR 117.11 through 40 CFR 117.14;

(3) The introduction of any pollutant into a publicly owned treatment works which is not in violation of applicable pretreatment requirements or other regulations controlling the introduction of pollutants into the publicly-owned treatment works;

(4) Any release which is specifically authorized by the administering agency after review of the HMPC Plan submitted pursuant to Section 95.07, provided that the HMPC Plan is part of an approved permit; and

(5) Emissions permitted by the Louisville Metro Air Pollution Control District.

REPORTABLE QUANTITY. That quantity, as set forth in Section 95.04.

RESPONDING AGENCY. Any agency of local government that is a party to the Louisville Metro Emergency Operations Plan, Annex Q, attached hereto as Appendix B, and which is authorized to respond to a hazardous materials incident on behalf of Louisville Metro Government.

STORE. To deposit or place a substance ~~in the city or county~~ within Louisville Metro for a period of 10 days or more, provided that such substance is not otherwise in transit.

THREATENED RELEASE. A circumstance which presents a substantial threat of a hazardous material incident release as a result of a transportation incident or incident when container structure damage is apparent or the potential for container structure damage exists; a circumstance which presents a substantial threat of a hazardous material incident at a fixed site facility as a result of damage or failure to a production systems or as a result of a non-functional process safety engineering control. ~~A threatened release would be evidenced by the puncturing of the inner or outer shell of the container structure, whether or not an actual release occurs.~~

USE. To store, maintain, treat, process, handle, generate, dispose of, or otherwise manage. USE shall include any mode of transportation other than on-site transportation.

VESSEL. Every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

Section 95.04 DETERMINATION OF REPORTABLE QUANTITIES.

(A) Listed hazardous materials The quantity in the column "RQ" for each hazardous material in ~~Appendix A~~the most recent version of 40 CFR 302.4 is the reportable quantity for that material. ~~The Appendix A list (40 CFR Part 302) will be automatically updated at such times as EPA publishes a new list. However,~~ "Reportable Quantities" may be adjusted higher or lower as provided by subsections ~~95.04(D) and (G)~~ (F), herein.

(B) Unlisted hazardous materials. Unlisted hazardous wastes designated as hazardous materials have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristics of toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit toxicity have the reportable quantities listed in ~~Appendix A~~the most recent version of 40 CFR 302.4 for the contaminant on which the characteristic of toxicity is based. If an unlisted hazardous waste exhibits toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Appendix A for those contaminants. If an unlisted hazardous waste exhibits the characteristic of toxicity, and either characteristics ignitability or corrosivity or reactivity, the reportable quantity shall be the lowest of the applicable reportable quantities.

(C) Oil.

(1) The reportable quantity for releases of oil to waters of the United States or adjoining shoreline is any quantity which violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or

adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(2) The reportable quantity for releases of oil to the environment other than releases to waters of the U.S. and adjoining shorelines is 56 gallons.

(3) Notwithstanding any other provision of this section, a release of oil from a properly functioning vessel engine shall not be deemed to be in reportable quantity; this provision shall not be applicable to oil accumulated in a vessel's bilges.

~~(D) Higher reportable quantity. Notwithstanding any other provision of this section, the administering agency, after review of the HMPC Plan submitted pursuant to Section 95.07, may designate a reportable quantity for a hazardous material in excess of the quantity determined under this section if the administering agency determines that the higher reportable quantity is consistent with the purposes and objectives of this ordinance.~~

~~(E)~~(D) Release of hazardous materials to sanitary sewer system. Notwithstanding any other provision of this section, any release of a hazardous material to a sanitary sewer system, storm sewer system, or blue line stream, or tributary to blue line stream, which is prohibited under applicable pretreatment or other regulations governing such discharges shall be deemed to be discharged in a reportable quantity.

~~(F)~~(E) Component hazardous materials release.

(1) A release of a mixture or solution, ~~of~~in which only one component is ~~a hazardous material is a component~~, shall be considered to be a release ~~in~~of a reportable quantity only where the ~~component~~ hazardous material component of the

mixture or solution is released in a quantity equal to or greater than its reportable quantity.

(2) A release of a mixture or solution of two or more hazardous materials ~~which~~ share the same characteristics of ignitability or corrosivity or reactivity and toxicity shall be considered a release ~~in~~ of a reportable quantity of a hazardous material if the total quantity of hazardous materials in the mixture or solution equals to or is greater than the reportable quantity of any one of the hazardous materials in the mixture or solution. The quantity of non-hazardous materials shall not be included for purposes of reporting.

~~(G)~~(F) Adjustments to reportable quantity list. The Appeals and Overseer Board established under Section 95.13, upon recommendation of a local regulatory agency, or upon request for review by a regulated hazardous materials user, may adjust upward or downward the reportable quantity on the most current applicable list.

~~(H)~~(G) SARA "RQ" list. A substance designated an extremely hazardous substance pursuant to Section 302(a) of the SARA of 1986 shall have the reportable quantity as set by the act under Section 304(a)(2). If the reportable quantity under the federal act differs from the RQ listed for the same substance in Appendix A to this ordinance, the lowest RQ shall be the reportable quantity.

Section 95.05 ADMINISTERING AGENCY.

The purpose of this ordinance is to establish a uniform county-wide program for protection of the environment from releases of hazardous materials to be administered by existing governmental agencies. The Metropolitan Sewer District (MSD) shall serve as the lead agency in the administration of this Ordinance.

Section 95.06 ~~NOTIFICATION TO FIRE COMMUNICATIONS BUREAU.~~

NOTICE AND REPORTING REQUIREMENTS.

(A) Notice upon discovery.

(1) ~~Whenever a hazardous material incident occurs~~ release (other than an authorized release) ~~of any hazardous material in a reportable quantity occurs on any facilities of any kind, the person party in charge (or a responding agency fire, police, or emergency medical service personnel) upon discovery or confirmation of such release shall immediately cause notice of the existence for of such release, the circumstances of same, and the location thereof to be given via by telephoning "911." to the Fire Communications Bureau.~~

(a) ~~Such notice is required when the circumstances and conditions on site are such that the individuals enumerated above either knew, or should have known that a release occurred.~~

(b) ~~(B) Emergency telephone number. The notice via "911" required by this section in Jefferson County shall be given by telephoning "911" or such other emergency telephone number as may be designated. This one call will meet the requirement of notifying local agencies and to the extent permitted under an existing memorandum of understanding will provide notice to the Kentucky Cabinet for Natural Resources and Fire Marshall shall serve as notification to all local agencies to which notification is required by KRS 39E.190, but shall not relieve the responsible party of any other notifications required by this Chapter, or other laws or regulations.~~

(C)(B) Duty to control release. The requirements of this section shall not be construed to forbid any ~~person~~ party on or about the facilities from using all diligence

necessary to control such release prior to the notification ~~to the Fire Communications Bureau~~ via "911," especially if such efforts may result in the containment of the release and/or the abatement of extreme hazard to the employees ~~of~~ or the general public. Delays in reporting releases due to in-house notification of off-site owners/supervisors shall not be acceptable and may result in penalties.

~~(D)~~(C) Air releases.

(1) Accidental air releases in excess of the reportable quantities listed in ~~Appendix A~~ 40 CFR 302.4 or, if unlisted, as prescribed by Section 95.04 (releases that are required to be reported to state and federal authorities) shall be reported under the requirements of this section unless a different reportable quantity has been established under an approved HMPC Plan for the particular facility.

(2) In order to insure compliance with the notice requirement of subsection ~~95.06(A)~~ 95.07(A), any ~~person~~ party required to prepare and submit an HMPC Plan for a facility, pursuant to Section 95.07, who possesses or stores at such facility hazardous materials that are a gas at standard temperature and pressure in quantities equal to or greater than the reportable quantity, shall maintain at the facility a list of such materials. Any ~~person~~ party required to maintain a list pursuant to this section may, in lieu thereof, incorporate such list in its HMPC Plan. Any list maintained pursuant to this section shall, upon request, be made available at the facility to representatives of the administering agency and any responding agency at the time of a Hazardous Materials Incident.

~~(E)~~(D) Threatened release.

(1) Whenever a threatened release occurs, as defined in Section 95.03, the ~~person~~ party in charge (or a responding ~~agency fire, police or emergency medical services personnel~~), upon discovery of such threatened release, shall immediately cause notice of the existence of such threatened release, the circumstances of same and the location thereof to be given ~~to "911"~~ by calling "911."

(2) Such notice is ~~also~~ required when the circumstances and conditions on-site are such that the ~~individuals~~ parties enumerated above either knew, or should have known that the threatened release ~~or environmental emergency~~ occurred.

(F) Duty to report to federal agencies. No statement contained in this section shall be construed to exempt or release any ~~person~~ party from any other notification or reporting procedure required by any federal agency.

Section 95.07 HAZARDOUS MATERIALS USE AND SPILL PREVENTION CONTROL PLAN.

(A) Applicability. The following ~~persons who~~ parties that use hazardous materials must prepare, submit to MSD, and maintain a "Louisville/Jefferson County Hazardous Materials Use and Spill Prevention Control Plan." ~~hereinafter referred to as the HMPC Plan:~~

(1) All federal, state, and local government entities in ~~Jefferson County~~ which Louisville Metro that use hazardous materials; and

(2) All of the following businesses or services in ~~Jefferson County~~ which Louisville Metro that use hazardous materials, as classified by the Standard Industrial Classification (SIC) code:

0782 Lawn and garden services

2011-3999 Manufacturing

4011-4953 Transportation, communication and public utilities

5043 Photograph equipment and supplies (wholesale trade)

5085 Industrial supplies (wholesale trade)

5161-5199 Specific categories in wholesale trade

5541 Gasoline service stations (retail trade)

7011-7218 Industrial and commercial launderers, etc. in services

7342 Disinfecting and exterminating services

7395 Photofinishing laboratories in services

7512 Passenger car rental in services

7513 Truck rental and leasing

7538-7549 Automotive repair shops and auto services in services

8062 General medical and surgical hospitals in services

8063 Psychiatric hospitals in services

8069 Specialty hospitals except psychiatric in services

(3) Those ~~persons~~ parties not covered in subsections 95.07(A)(1) or (2), above, who use hazardous materials may be required to submit a HMPC Plan if the administering agency finds it necessary in order to protect the public health and safety.

(4) The administering agency shall not require an HMPC Plan or amendments to an existing plan for those hazardous materials added to this ordinance by adoption of the “extremely hazardous substances” list pursuant to 302(A) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) until such time as the

reporting format under ~~{SARA}~~ and under this ordinance have been reconciled, ~~but in no event shall such plan be required prior to August 1, 1993.~~

(B) Exemptions from Plan filing requirements. The following parties are exempt from the HMPC Plan filing requirements under this Section 95.07:

(1) ~~Persons who~~ Parties that handle ~~agriculture~~agricultural chemicals in the ordinary course of ~~agriculture~~agricultural operations other than warehousing or bulk storage of such chemicals for resale or commercial application.

(2) ~~Persons who~~ Parties that handle hazardous materials ~~otherwise regulated~~ only at temporary construction sites in existence for six months or less.

(3) ~~Persons who~~ Parties that handle materials only in conjunction with residential use of property for non-commercial purposes.

(4) ~~Consumer~~Parties that handle consumer products and foodstuffs packaged for distribution to and intended for use by the general public. This refers to ingredients used in production of foodstuffs which are regulated by the federal Food, Drug and Cosmetic Act, as amended.

(5) ~~Retail sale, however where a portion of the retail sale is used for bulk storage is regulated~~Parties that handle materials for retail sale; provided that any portion of materials stored in bulk storage at a retail sale site used for repackaging, and such bulk storage meets or exceeds a reportable quantity is subject to the requirements of this Section 95.07., however, where a portion of the retail sale is used for bulk storage is regulated.

(6) Liquor stores.

(7) Any ~~other~~party obtaining another exemption based on specific application to the administering agency, provided that such element, compound, mixture, solution or substance to be considered for exemption, when released into the environment, will not present a danger to the public health or welfare or the environment or to the employees of any ~~person~~ party or the general public.

(8) ~~Persons who~~ Parties that do not handle hazardous materials in reportable quantities, provided that the administering agency may require a plan under such conditions as set forth in subsection 95.07(A)(3) above.

(C) Requirements for HMPC Plan. The administering agency shall provide forms with the necessary instructions and requirements for completing HMPC Plans in compliance with this ordinance. The HMPC Plan will include but not be limited to:

- (1) Facility identification;
- (2) Spill history;
- (3) Identification of hazardous material (HM) storage, in-plant transfer, process and materials handling areas and hazardous material truck and rail car loading and unloading areas;
- (4) Description of plant site runoff from areas described in subsection 95.07(C)(3), including in-place containment appurtenances (for example, dikes) and means of releasing rainwater from such areas;
- (5) Other means of spill prevention, control and countermeasure of all listed hazardous materials, such as containment or detection equipment and absorbent materials;

(6) Provisions for the operation and maintenance of all items described in subsection 95.07(C)(5);

(7) Contingency plans, including spill notification procedures for both internal personnel as well as outside authorities, including MSD;

(8) Provisions for the training of personnel in the utilization of subsection 95.07(C)(7);

(9) Security provisions;

(10) Provisions for inspections, spill reports preparation, and records retention;

(11) Schedule (with actual dates or mile-stones) for plan elements yet to be implemented, with provisions for reporting progress to MSD;

(12) Provisions for plan review and amendment submission;

(13) Certification of plan by an officer of the ~~company or his~~ submitting party, or written designee; however, any activity which can be defined as engineering or the practice of engineering by KRS 322.010 shall be performed by a registered professional engineer, licensed to practice in the Commonwealth unless otherwise exempted by KRS Chapter 322;

(14) For purposes of this section, one plan may be submitted by the owner of electrical equipment at multiple locations when such equipment contains materials used either as a lubricant, coolant, or insulation for the operation of such equipment; subsections 95.07(C)(3) and (4) above shall not apply to single plans authorized under this ordinance.

(D) Amended reportable quantities. HMPC Plans submitted as part of an MSD Wastewater Discharge Permit may provide for amended reportable quantities for releases, provided that such amendments are approved by the administering agency and the requesting industry has a good safety record relating to hazardous materials use.

(E) Review and approval of plan. The HMPC Plan shall be reviewed by MSD and the Public Health and Wellness Department, ~~the fire department with jurisdiction~~ Fire Chief, and any other local agency with appropriate authority; however, final administrative action on the HMPC Plan shall be taken by the administering agency. Upon submission of the HMPC Plan, the ~~person~~ party submitting the plan shall be presumed to be in compliance with this section pending final review of the plan. HMPC Plans which do not provide necessary information or are otherwise deficient shall be rejected and returned to the ~~person~~ party submitting the plan for revision and resubmittal.

(F) Appeals. Any rejection or denial of approval of a HMPC Plan may be appealed to the Appeals and Overseer Board pursuant to Section ~~95.11~~ 95.13.

(G) Updates, revisions, and changes. A new or modified HMPC Plan may be required and submitted to the administering agency ~~with jurisdiction~~ when any ~~person~~ party institutes the use of a new process or change in its manufacturing or processing facilities or when there is a significant change in its existing operating or wastewater constituents or characteristics.

(H) Training and education programs.

(1) Each employer or employee who uses hazardous materials as herein defined and who is required to prepare a HMPC Plan shall be required to have an initial and ongoing safety and accident prevention training program for all such employees. This training and education program shall include but not be limited to appropriate work practices, protective measures, and emergency procedures. The details and frequency of the training program should be provided as part of the HMPC Plan for the facility as provided in subsection 95.07(C)(~~778~~).

(2) The administering agency shall have the authority to require different frequencies of training for industries with frequent spills and/or spill histories.

(I) Facilities required to submit HMPC plans also must comply with any related permit requirements of the fire department or district with jurisdiction.

(J) Facilities with an approved HMPC Plan shall maintain a copy on site at all times and produce the Plan upon request from the administering agency or any responding agency.

(K) Facilities with an approved HMPC Plan shall post a copy of Attachment C of the approved HMPC Plan in a location that is accessible and visible by employees.

(L) It shall be a violation of this Chapter for a party to fail to:

(1) Make available an approved HMPC Plan to all pertinent employees;

(2) Follow a HMPC Plan;

(3) Adequately train employees on HMPC Plan procedures; or

(4) Maintain spill prevention and control equipment in proper working order.

Section 95.08 INSPECTION AND INVESTIGATION.

(A) Inspections. The administering agency and any responding agency shall have the authority to conduct periodic inspections of any facilities for the purposes of ascertaining or causing to be corrected any condition which may be a violation of this ordinance. Joint inspection shall be conducted where necessary for purposes of HMPC Plan review. Inspections shall be made during normal working hours.

(B) Investigations. When information that has been received for evidence indicates that an unreported release may have occurred on a property or facility, the administering agency and any responding agency shall be allowed immediate access to the facility by company personnel to conduct a proper investigation. Admission under this provision shall be consistent with the company's safety procedures and incident protocols ~~outlined in Annex X~~ as set forth in Appendix B, but shall not result in an unreasonable delay.

Section 95.09 CONFIDENTIAL INFORMATION AND TRADE SECRETS.

(A) Information and data provided by any ~~person~~ party or obtained from any report, questionnaire, permit application, permit and monitoring program and from inspections shall not be made available to the public or any other governmental agency unless required by law. Any requests for information provided or obtained pursuant to this Chapter 95, and any claims of confidentiality or trade secret protection for such information, shall be governed by the Kentucky Open Records Act, KRS 61.870 et seq.

~~— (B) (1) Upon submission of information in any form, it shall be the obligation of the submitter to separate all claimed confidential and trade secret material from any material subject to disclosure under the law.~~

~~——(C)—— Any requests made under the law for information containing confidential or trade secrets shall be brought to the attention of the person requesting confidentiality of its trade secrets by certified mail return receipt requested. The notification shall advise the person requesting confidentiality of the decision of the administering agency regarding release of the confidential information in accordance with any applicable laws or regulations, including provision of fifteen days' notice to such party that the review for disclosure has been requested. In no event will such confidential information be released until five days have elapsed from the date notice is sent by registered mail.~~

~~——(D)—— Within 72 hours after receipt of notification, the person requesting confidentiality of its trade secrets shall have the burden to initiate appropriate actions at law or otherwise to protect its confidential or trade secrets from disclosure and must demonstrate that public disclosure of confidential or trade secrets is likely to cause substantial harm to this competitive position.~~

~~——(E)—— Any individual who party releases information containing confidential or trade secrets in violation of the law or this ordinance shall be subject to disciplinary action by his employer for malfeasance, misfeasance, and willful neglect of official duties and may further be guilty of misuse of confidential information under KRS 522.040.~~

~~——(F)—— The provisions of this section shall in no way prohibit or limit the exchange of information, confidential or otherwise, between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate governmental need or is necessary in the performance of a legitimate government function.~~

~~(G)~~(B) MSD shall be the repository for all trade secret information, and shall respond to any Open Records requests made with regard to HMPC Plans.

Section 95.10 ~~ENFORCEMENT; NOTICE OF VIOLATION.~~

EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY
REPORTING REQUIREMENTS

(A) ~~Primary responsibility. MSD shall have primary responsibility for enforcement of the provisions of this ordinance. Those facilities required by the Superfund Amendments and Reauthorization act (SARA) of 1986, Title III, and any regulations promulgated thereunder, to submit annually an emergency and hazardous chemical inventory form shall be subject to the reporting requirements of this subsection: 95.10.~~

(B) (1) Any facility that reports Tier II information to the Louisville/Jefferson County Metro Emergency Planning Committee (EPC), as set forth in 42 U.S.C. 11022, shall be required to use the electronic reporting software specified by that agency, which shall be set forth in its policies as they are adopted and/or revised.

(2) Such electronic reporting software that is utilized by the EPC shall be provided by the U.S. Environmental Protection Agency and available to facility owners and operators directly from that agency.

Section 95.11 ENFORCEMENT.

~~(B)~~(A) Notice. Upon notification or discovery of any release or violation of the provisions of this ordinance, the administering agency and any responding agency shall immediately investigate the site upon which the violation is located. The administering agency will be the lead enforcement agency for violations of this ordinance. If a violation exists, ~~a notice~~ or a release has occurred, a citation describing the violation or release shall be served by the administering agency upon the ~~person who~~ party that is responsible for the facilities upon which the violation or release has occurred, if the identity of the ~~person~~ party is known. If a release occurs on a facility owned or operated by MSD, then the Louisville/Jefferson County Emergency Management Agency will act as the lead agency to determine whether a release constitutes a violation and whether a citation shall be issued to MSD. MSD as the administering agency will retain all of its other rights and obligations under the Chapter 95 with the exception of review of any releases on MSD facilities. ~~The notice~~ citation shall also include the following if applicable:

(1) A statement that the situation must be abated within the period of time prescribed by the Public Health and Wellness Department in consultation with the administering agency giving the ~~person~~ party responsible for the release the option to initiate cleanup and disposal, provided that no unreasonable delay or damage to the public is the result thereof.

(2) A statement that if the situation is not remedied within the prescribed period of time, the Public Health and Wellness Department administering

~~agency with jurisdiction and/or any responding agency(ies)~~ may proceed to correct the violation or release.

(3) A statement that the ~~person~~ party shall be liable for ~~any~~ costs ~~occurred~~ incurred by ~~public~~ responding agencies associated with their releases ~~except for those costs that are associated with a normal emergency response.~~

~~—————~~ (4) ~~A statement that after the administering agency has corrected the violation, a bill shall be sent charging the person~~ as set forth in Section 95.12 below, and that after the violation has been corrected, or the release has been remediated, a bill shall be sent, charging the party the amount of costs and expenses incurred by ~~the governmental agency in correcting the violation~~ the administering agency and any responding agencies.

~~(5)~~(4) A statement that, in addition to cost recovery measures, that monetary penalties also may be levied by the administering agency for violations that have occurred.

(5) Any penalty assessed in accordance with Section 95.99.

~~—————~~ (B) The administering agency will issue a Preliminary Response Report to the party found to be responsible for a hazardous materials incident. The party shall complete and submit the PRR to the administering agency within ten calendar days of the incident date. Failure to submit the PRR to the administering agency by the due date, or submission of an incomplete PRR shall be deemed to be a violation of this Ordinance.

(C) Governmental response. ~~In cases where the identity of a person who is responsible for facilities upon which a violation has occurred is not known at the time a~~

~~violation is reported, the Metro Government or any governmental agency with jurisdiction in Jefferson County~~ One-If a hazardous materials incident occurs, the administering agency and/or one or more responding agencies may take reasonable steps to abate any problem associated with the hazardous materials incident and may take reasonable steps to clean up the area affected to assure continuing safety of the public and the environment, if a hazardous materials incident occurs and either of the following circumstances exists:

(1) When the identity of the person party responsible for the facility upon which such hazardous materials incident occurs is unknown at the time of the incident and subsequent remediation by the governmental entity or entities administering agency and/or responding agencies; or is determined, a bill shall be sent to the person for the costs for correcting the violation according to the provisions of Section 95.10(B).

(2) A situation exists that presents an imminent danger to facility employees and/or the general public, and the party responsible for the facility upon which the hazardous materials incident has occurred is not taking sufficient response actions to abate and minimize such imminent danger.

(D) When the identity of the party responsible for the facility is determined, or, for emergency situations, at a time subsequent to the cleanup of the spill, leak or release, a bill shall be sent to the party for the costs for correcting the violation, or remediating the release, in accordance with the provisions of Section 95.12.

~~(D)~~(E) Injunctive relief. The administering agency is empowered to seek injunctive relief for violations of this ordinance should other means prove ineffective and a threat to public health and safety exists.

SECTION 95.12 COST RECOVERY BY RESPONDING AGENCIES.

(A) Cost recovery shall be available to the administering agency and any responding agencies for a hazardous materials incident pursuant to this Section 95.12.

(B) (1) Cost recovery shall encompass any or all of the following expenses that directly result from a hazardous materials incident and that are directly incurred by the administering agency and/or responding agencies pursuant to their rights and obligations under this Chapter 95:

(a) Reasonable and necessary costs incurred for response, incident assessment, control, containment and abatement of a hazardous materials incident;

(b) Reasonable costs associated with transportation and storage of hazardous materials if necessary for control and containment of a hazardous materials incident;

(c) Reasonable and necessary costs of ensuring the safety of the public, both on and off the site of the hazardous materials incident;

(d) Reasonable and necessary costs of repairing or replacing equipment damaged or destroyed as a direct result of a hazardous materials incident;

(e) Reasonable and necessary contract labor and equipment costs, relating directly related to a hazardous materials incident;

(f) Reasonable and necessary overtime costs for time devoted specifically to a hazardous materials incident;

(g) Disposable materials and supplies consumed and expended as a result of a hazardous materials incident;

(h) Decontamination of equipment utilized during a hazardous materials incident; and

(i) Reasonable and necessary laboratory costs associated with analyzing samples taken during a hazardous materials incident.

(2) Responding agencies shall keep a detailed record of costs and expenses associated with hazardous materials incident responses, including receipts, when available.

(3) The authority to recover costs attributable to hazardous materials incident response shall not include (i) costs incurred for fire suppression services that are routinely provided by Louisville Metro Government, Jefferson County fire protection districts, or their agents; (ii) costs associated with normal wear and tear of equipment used by responding agencies, or (iii) for any other costs typically incurred by the administering agency or other responding agencies associated with a routine emergency response.

(C) (1) A claim by a responding agency for cost recovery from the owner/operator of the facility at which the hazardous materials incident occurred , along with any supporting documentation, shall be submitted within thirty (30) days of the incident, or of the discovery of damage to any equipment specifically related to the

incident, to EMA. It is the responsibility of each responding agency to fully document and support any claim for reimbursement.

(2) EMA shall forward a copy of all the cost recovery requests to the owner/operator of the facility being charged and to the billing department of each responding agency making a claim for cost recovery.

(D) If additional remediation is required, and additional costs are incurred, the responding agency may continue to submit claims for reimbursement of expenses, and provide all required documentation, as set forth herein.

(E) Cost recovery shall not be deemed a fee or penalty, as defined within this Ordinance. Appeals of billings made in accordance with this subchapter may be taken in accordance with the provisions of Section 95.14.

Section ~~95.11~~ 95.13 APPEALS AND OVERSEER BOARD.

(A) Purpose. An Appeals and Overseer Board (the "Board"), composed of representatives of industry, regulatory agencies and the general public appointed by the Mayor of Louisville Metro, shall be established to insure that an appeal is available to those ~~persons~~ parties aggrieved by an action of the administering agency regarding the adequacy of a HMPC Plan; to those ~~persons~~ parties fined or penalized pursuant to this ordinance; and to coordinate and integrate the policies and procedures of the regulating agencies and ~~person~~ parties related to the HMPC Plan. Any recommendation of the Appeals and Overseer Board shall be advisory only and shall not be binding in any manner whatsoever upon the ~~Board~~Board of the ~~Administering Agency~~administering agency.

(B) Appeal. The Board, in hearing an appeal, shall recommend to the administering agency that the agency's action be modified, upheld, or dismissed or that a fine or penalty levied upon a ~~person~~ party for violation of any provision of this ordinance be set aside, modified or left intact. The Board, upon an Plan appeal, may recommend to the administering agency exemptions or modifications in the content of the HMPC Plan and requirements for reporting hazardous materials releases, provided that such exemption or modification is based on the preventive physical aspects of the facility, including containment structures and automatic monitors, and the recognized and documented good performance of the industry in handling hazardous materials.

(C) Composition. The Board shall be composed of representatives of industry, regulatory agencies and the general public not to exceed nine members. The Mayor shall appoint nine members, four of whom shall be representatives of regulated

industry appointed from a list of at least ten names submitted by Greater Louisville, Inc.; three of whom shall be representatives of regulatory agencies; and two of whom shall be representative of the general public. A simple majority of the Board shall constitute a quorum. The ~~Appeals and Overseers~~ Board shall function according to by-laws developed by the Board.

Section 95.14 APPEALS OF COST RECOVERY CLAIMS

Any party charged with the costs of remediating a hazardous materials incident in accordance with the provisions of Section 95.12 may appeal the imposition of cost reimbursement to the Appeals and Overseers Board, which shall review any documentation provided to such party by the administering agency and/or any responding agencies, and the documents submitted in response to the Board by the responsible party in its appeal of the cost recovery billing. Such appeal shall be filed within thirty (30) days following the responsible party's receipt of a request for cost reimbursement pursuant to Section 95.12. The Board shall review such information at its first regularly scheduled meeting following the filing of the party's appeal. The Board shall determine whether the claim for cost reimbursement is reasonable, necessary, and consistent with the requirements of Section 95.12, and shall provide its written recommendation to the Director of the Public Protection Department within fourteen (14) days following the meeting at which it considers the appeal. The Director of the Public Protection Department shall review the recommendation of the Board, along with the documentation provided to the Board, and shall issue a written decision within ten (10) business days of the receipt of the Board's recommendation. This decision may be appealed by the responsible party to a civil court of competent jurisdiction.

Section ~~95.12~~ 95.15 AFFIRMATIVE DEFENSE.

It shall be an affirmative defense to any enforcement action other than an action for violation of Section 95.06, including the recovery of cleanup costs pursuant to this ordinance, if a ~~person~~ party can prove that a release of hazardous materials was caused solely by an act of God, an act of war, negligence on the part of the Metro Government, or an act or omission of a third party, or any combination of the foregoing clauses.

Section ~~95.13~~ 95.16 FEES.

Fees shall be imposed for HMPC Plan review or approval, the revenues of which shall cover only the costs of HMPC Plan review and approval. The administering agency will set and collect fees. The fee schedule shall be uniform for ~~all the~~ administering agencies and any responding agency required to review a HMPC Plan.

Section ~~95.14~~ 95.17 DISCLAIMER OF LIABILITY.

This ordinance shall not create liability on the part of the administering agency or any authorized responding agency for any damages that result from reliance on the ordinance or any administrative decision lawfully made thereunder. All ~~persons~~ parties are advised to determine to their own satisfaction the level of protection, in addition to that required by this ordinance, necessary or desirable to ensure that there is no unauthorized release of hazardous materials.

Section 95.18. INDOOR RELEASE OF HAZARDOUS MATERIALS.

The actual release of a hazardous material indoors that poses an imminent threat to the health, safety, or welfare of either individuals at the site of the

incident, or of the general population and that requires an immediate response, incident assessment, control, containment, and abatement of the immediate hazard by an outside agency shall be immediately reported to the Department of Health of Wellness.

Section 95.98 EXISTING OBLIGATIONS AND SEVERABILITY.

(A) Nothing in this Ordinance is intended to relieve any party of its obligations regarding the subject matter of this Chapter that exist under any federal, state, or local laws, or regulations.

(B) If any provision of this chapter as now or later amended or its application to any ~~person~~ party or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 95.99 PENALTY.

(A) ~~Amount exceeding reportable quantity. The person~~ Any party responsible for a hazardous material release in an amount exceeding the reportable quantity may be fined not more than ~~\$1,000~~ \$5,000, if the release is not an authorized release, and if the release involved willful violations, negligence, or repeated spills under similar conditions and where a significant quantity of hazardous material is involved taking into account real or potential damage to the environment and threat to the public health. Every incident giving rise to such a release shall constitute a separate offense; however, no person shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(B) ~~Failure to notify fire communications bureau. The person who~~ Any party that fails to notify the Fire Communication Bureau send immediate notification via "911" as required by Section 95.06 may be fined not more than \$5,000.

(C) ~~Any provision other than notification. The person who~~ Any party that otherwise violates any provision of this ordinance other than Section 95.06, including failure to comply with an HMPC Plan, shall be fined ~~not more than \$100~~upto up to \$5,000. Every incident giving rise to such a violation shall constitute a separate offense; however, no person shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(D) ~~Administrative fines. Any person~~ party violating any of the provisions of this ordinance shall, subject to the affirmative defenses set forth in Section ~~95.12~~ 95.15, become liable civilly to the Metro Government, political subdivisions thereof, or applicable fire protection districts for any expense, loss, or damage caused to the government, political subdivision, or fire protection districts by reason of such violation, including but not limited to any cleanup, evacuation, administrative or other expenses, and legal expenses-

(E) ~~Violation of MSD Wastewater Discharge regulations. Any person who~~ Any party that violates any provision of the MSD Wastewater Discharge Regulations, requirements, or conditions set forth in wastewater discharge permits duly issued by MSD, or who discharges wastewater which ~~cause~~causes pollution, or violates any cease and desist order, prohibition, discharge limitation, national standard ~~or of~~ performance, pretreatment, or toxicity standard may also be liable civilly to liabilities imposed by the Metropolitan Sewer District. The civil liability may be in a sum not to exceed ~~\$10,000~~ \$32,500 or as set by the Clean Water Act for each violation. Each incident giving rise to a violation of these sections shall constitute a separate offense;

however, no person shall be held responsible for more than one violation per day where the violation occurs at the same facility and are causally related.

(F) ~~Penalties imposed pursuant to legislative authority.~~ Any penalties imposed under this section shall be levied by the administering agency, or by any responding agency with jurisdiction to levy penalties pursuant to its legislative authority.

APPENDIX A

Section

~~1. Adoption by reference~~

~~1. ADOPTION BY REFERENCE.~~

~~(A) The "Summary of the Hazardous Materials Ordinance and Listing of Hazardous Materials (Appendix A)," and all amendments thereto, attached to Ord. 17-1993, adopted and effective 7-7-1993, are hereby adopted by reference and incorporated into this code of Ordinances as if fully set forth herein.~~

~~(B) Copies of Appendix A are available for public inspection during normal hours at the office of the City Clerk.~~

APPENDIX B

(A) Adoption by reference.

The most recent version of the Louisville Metro Government Emergency Operations Management Plan, Annex Q, is hereby adopted by reference in its entirety. The portions of Annex Q that are available for public inspection may be reviewed during normal business hours at the office of the Metro Council Clerk.

(B) Conflicts.

Any conflict between the provisions of this Ordinance and its incorporated appendices shall be resolved in favor of the most recent legislation enacted by the Louisville Metro Council.

SECTION II. This Ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Rick Blackwell
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

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